

MEMORANDUM

TO: Governing Board Members

FROM: Kirk L. Burns, Acting General Counsel

DATE: July 22, 2011

SUBJECT: Action Required
Authorization to file suit
Century Homebuilders, LLC, and all other appropriate parties –
Enforcement Action for various tracts of land located in Section 23,
Township 51 South, Range 39 East, Broward County, Florida
("Property")

Background

This is a request to file suit to resolve violations of Consent Order No. SFWMD 2011 018 CO ERP, which was executed on February 25, 2011. The execution of this Consent Order was intended to resolve violations involving the Respondent's failure to construct the surface water management system and mitigation area on the Property in compliance with Environmental Resource Permit Nos. 06-04102-P and 13-02049-P. On July 14, 2004, the District issued these permits to the Respondent to authorize the construction and operation of a surface water management system to serve 87.49 acres of residential development known as Century Prestige, as well as an off-site mitigation area for the preservation, enhancement, and restoration of 16.68 acres of wetlands. The off-site mitigation area contains several tracts, which were initially owned by the State of Florida Trustees of the Internal Improvement Trust Fund and the District. However, a portion of a tract in the off-site mitigation area owned by the District was subsequently sold to the City of Miramar, which resulted in the execution of a modified mitigation plan.

The modified mitigation plan contained a mitigation area of 20.18 acres. On September 21, 2009, District staff observed that Respondent failed to: 1) complete construction of the perimeter ditch, flushing channels, hydric tree islands, and marsh areas in the off-site mitigation area, 2) fund a trust fund for the perpetual maintenance of the mitigation area as required by its permit, 3) provide a letter of credit to ensure the mitigation, maintenance, and monitoring plan would be completed, and 4) plant, maintain, and monitor the wetland areas. In addition, the Respondent had dredged a ditch along the northern boundary of the property without prior authorization through an Environmental Resource Permit. The Consent Order required the Respondent to 1) backfill the unauthorized ditch within 30 days of the effective date of the Consent Order, and 2) remove all exotic vegetation and grade the wetlands in the mitigation area within 90 days of the effective date of the Consent Order. To date, the

Respondent has not completed any of these corrective actions. These items must be completed prior to the initiation of the planting, maintenance and monitoring of the wetlands as required by the Consent Order. Respondent also failed to pay the District civil penalties and costs totaling \$11,700.00, as well as \$14,569.96, to ensure perpetual maintenance of the off-site mitigation area.

Numerous attempts have been made by District staff to resolve these violations including the issuance of a Notice of Violation and a Pre-Litigation Demand Letter.

How this helps meet the District's 10 year Strategic Plan

This effort directly supports the District's land resources mission.

Funding Source

This litigation will be handled by the District's Office of Counsel. Any costs associated with this litigation will be paid from budgeted ad valorem funds.

This Board item impacts what areas of the District, both resource areas and geography?

The subject property is located in Broward County. The unpermitted works and unmitigated wetland impacts affect the District's management of surface waters.

What concerns could this Board item raise?

If this matter is not resolved, the unauthorized works could continue and the wetland impacts will remain unmitigated.

Why should the Governing Board approve this item?

The Governing Board should approve this item to resolve the Consent Order non-compliance and the new unpermitted works, and to take appropriate action against all responsible parties.

If you have any questions, please do not hesitate to call me at extension 6546.

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